

REMARKS

For the Examiner's convenience and reference, Applicant's remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

STATUS OF THE CLAIMS

Claims 1-20 were examined and remain pending. Claims 1-20 stand rejected. There are no amended claims. No claims are canceled. No new claims have been added. No new matter has been added.

RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. § 102(e)

Claims 1-4 and 11-14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 2004/0059956 to Chakravarthy et. al (hereinafter "Chakravarthy"). Applicant respectfully submits that these claims are patentable over the cited reference because the cited reference does not teach or suggest each and every element of these claims. Accordingly, Applicant traverses these rejections as outlined below.

CLAIM 1 and 11

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131.

With regard to the rejection of independent claims 1 and 11, Applicant respectfully submits that these claims are patentable over the cited reference, because Chakravarthy fails to

teach each and every element set forth in claims 1 and 11. Specifically Chakravathy fails to teach the recited element wherein “the CPU is adapted to provide a RESET signal to the counter for each CLK pulse when a software task is not running.”

To support the rejection of claims 1 and 11, the Office Action states that the signal (PMCPUCLKUNHALTED# 222) disclosed in Chakravathy is the equivalent of the RESET signal in claims 1 and 11 of the present invention. See Office Action p. 2, line 27. The Office Action further states that Chakravathy anticipates the element of claims 1 and 11 wherein “the CPU is adapted to provide a RESET signal to the counter for each CLK pulse when a software task is not running” by disclosing that a “counter within the performance monitor 204 does not count the number of clock pulses (or ticks) when said PMCPUCLKUNHALTED# is de-asserted.” See Office Action p. 2, lines 26-27 and p.3 lines 1-3 (citing Chakravathy paragraph 28). Applicant respectfully disagrees with the Office Action’s characterization of the cited reference.

The signal (PMCPUCLKUNHALTED# 222) is not the equivalent of the RESET signal claimed in the present invention. The signal (PMCPUCLKUNHALTED# 222) acts as an enabling signal in Chakravathy such that a counter continues to increment only when that signal is asserted, but the signal (PMCPUCLKUNHALTED# 222) does not cause the counter to reset regardless of whether or not it is asserted. Paragraph 28. Conversely, the RESET signal in the present invention does not simply enable the counter to continue incrementing but, instead, resets the counter by causing the value of the counter to return to zero when a software task is not running. See Application p. 4, lines 9-12 and lines 25-30. A signal that enables a counter to count and a signal that resets a counter to zero are fundamentally and patentably distinguishable.

A close reading of Chakravathy further demonstrates the importance of this distinction. Chakravathy requires an additional system timer to properly function. See Figures 5 and 6 and paragraphs 36-39. That invention initializes a timer and begins counting the number of clock cycles used by the microprocessor. Then, after a preset sampling time period ends, the timer is stopped and calculations are made to determine how many clock cycles were used by the microprocessor during the sampling period. See Figures 5 and 6 and paragraphs 36-39. The present invention on the other hand, directly utilizes a count value to continuously enhance the efficiency of the system by adjusting control signals based on the count value. See Application

Figure 2 and the text generally. The novel use of the RESET signal, as recited in claims 1 and 11, facilitates this operation and is not taught by Chakravarthy.

Because Chakravarthy fails to teach each and every element recited in claims 1 and 11, the Office Action fails to establish a *prima facie* case of anticipation. Thus, Applicant respectfully submits that independent claims 1 and 11 are patentable over the cited reference. Consequently, Applicant requests that the rejection of claim 1 under 35 U.S.C. § 102(e) be withdrawn.

CLAIMS 2-4 and 12-14

Given that dependent claims 2-4 depend from claim 1 and claims 12-14 depend from claim 11, Applicant respectfully submits that those claims are also patentable over the cited reference. Accordingly, Applicant requests that the rejection of dependent claims 2-4 and 12-14 under 35 U.S.C. § 102(e) be withdrawn.

RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 5-10 and 15-20 stand rejected under 35 U.S.C. § 103(a). In particular, claims 5-10 and 15-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chakravarthy in view of U.S. Patent No. 2004/0098631 to Terrell, II (hereinafter “Terrell”). Applicant respectfully submits that these claims are patentable over the cited references, because claims 5-10 and 15-20 depend from allowable claims 1 and 11 respectively. Accordingly, Applicant traverses these rejections as outlined below.

CLAIMS 5 -10 and 15-20

With regard to the rejection dependent claims 5-10 and 15-20, Applicant respectfully submits that independent claims 1 and 11 are patentable over the cited references as described above. Specifically, Chakravarthy fails to teach the recited element wherein “the CPU is adapted to provide a RESET signal to the counter for each CLK pulse when a software task is not running.” Accordingly, Applicant submits that claims 5-10 and 15-20 are patentable in their current form as depending from independent claims 1 and 11 respectively. Consequently,

Applicant requests that the rejection of claims 5-10 and 15-20 under 35 U.S.C § 103(a) be withdrawn.

Futhermore, Terrell, like Chakravarthy, fails to teach wherein a “CPU is adapted to provide a RESET signal to [a] counter for each CLK pulse when a software task is not running.” Thus, a rejection of claims 1 and 11 under 35 U.S.C. § 103(a) based on Chakravarthy in view of Terrell would also be improper. (A prima facie case of obviousness requires the combination of references to teach or suggest all of the claim limitations. MPEP 2142.)

CONCLUSION

As a result of the presented amendments and remarks, Applicant asserts that claims 1-20 are patentable and in condition for prompt allowance. Should additional information be required regarding the amendment or traversal of the rejections of the independent and dependent claims enumerated above, the Examiner is respectfully asked to notify Applicant of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

/Brian C. Kunzler/

Brian C. Kunzler
Reg. No. 38,527
Attorney for Applicant

Date: June 23, 2006
Kunzler & Associates
8 East Broadway, Suite 600
Salt Lake City, UT 84111
Telephone (801) 994-4646
Fax (801) 531-1929